

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 7131

DATE COMPLAINT FILED: August 25, 2016

DATE OF NOTIFICATION: September 8, 2016

LAST RESPONSE RECEIVED: October 18, 2016

DATE ACTIVATED: February 9, 2017

EARLIEST SOL: October 29, 2019

LATEST SOL: November 19, 2019

ELECTION CYCLE: 2014

**COMPLAINANT:**

Brian T. Griset

**RESPONDENTS:**

Carol Shea-Porter

Carol Shea-Porter for Congress and Mary DiModika-Kulju in her official capacity as treasurer

Susan D. Mayer

ActBlue and Erin Hill in her official capacity as treasurer

Democratic Congressional Campaign Committee and Kelly Ward in her official capacity as treasurer

Kaufman Legal Group

National Committee to Preserve Social Security and Medicare PAC and Christine Kim in her official capacity as treasurer

NGP VAN, Inc.

Senior Votes Count and Tony Fazio in his official capacity as treasurer

**RELEVANT STATUTES AND REGULATIONS:**

52 U.S.C. § 30104(b) and (g)

52 U.S.C. § 30116(a)(1)

52 U.S.C. § 30116(a)(7)(B)(i)

52 U.S.C. § 30116(f)

52 U.S.C. § 30118(a)

11 C.F.R. § 104.3(b)

11 C.F.R. § 109.20

11 C.F.R. § 109.21

11 C.F.R. § 110.6(c)(1)(iv)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

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1 **FEDERAL AGENCIES CHECKED:** None

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3 **I. INTRODUCTION**

4 The Complainant alleges that Representative Carol Shea-Porter and Carol Shea-Porter for  
5 Congress ("Committee") coordinated with Susan D. Mayer, a Shea-Porter congressional staffer,  
6 and Senior Votes Count ("SVC"), a non-connected committee, regarding a \$3,110 contribution  
7 that Mayer made to SVC, which was purportedly used to make undisclosed independent  
8 expenditures supporting Shea-Porter shortly before the 2014 general election.<sup>1</sup> The Complainant  
9 also alleges that SVC failed to disclose Mayer's occupation, and ActBlue, through which Mayer  
10 made her contribution to SVC, may not be forwarding accurate employment information. In  
11 addition, the Complaint alleges that Kaufman Legal Group made an in-kind contribution to SVC  
12 by forgiving a debt for legal fees. The Complainant also alleges that the Democratic  
13 Congressional Campaign Committee coordinated on expenditures in Shea-Porter's district, and  
14 the National Committee to Preserve Social Security and Medicare PAC coordinated its actions  
15 with SVC to support Shea-Porter. Finally, a supplement to the Complaint alleges that NGP  
16 VAN, Inc., credited services to SVC and the Committee, resulting in in-kind contributions.

17 For the reasons below, we recommend that the Commission dismiss with caution the  
18 allegations that SVC failed to file a 24-Hour Report and failed to disclose the independent  
19 expenditures on its 2014 Post-General Report. Further, we recommend that the Commission  
20 dismiss with caution the allegations as to SVC and ActBlue regarding the reporting of Mayer's  
21 occupation and employer. We also recommend that the Commission find no reason to believe as  
22 to the coordination, excessive contribution, and reporting allegations involving SVC, the

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<sup>1</sup> Additionally, Complainant alleges that by making the resulting contribution to the Committee, Mayer violated the ethics rules of the U.S. House of Representatives and a federal statute, 18 U.S.C. § 603, prohibiting a congressional staffer from donating, directly or indirectly, to his or her employer's campaign. Compl. at 1. The Commission does not have jurisdiction over violations of 18 U.S.C. § 603.

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1 Committee, Shea-Porter, and Susan Mayer. Further, we recommend that the Commission find  
2 reason to believe that Kaufman Legal Group made, and SVC accepted, prohibited contributions  
3 in the form of uncollected debts, and that SVC failed to report those contributions. We  
4 recommend that the Commission find no reason to believe that NGP VAN, Inc. made, and SVC  
5 accepted, prohibited contributions concerning billing errors that were corrected. We also  
6 recommend that the Commission find no reason to believe that NGP VAN, Inc. made, and the  
7 Committee accepted, prohibited contributions regarding other debts. Finally, we recommend  
8 that the Commission find no reason to believe that the Democratic Congressional Campaign  
9 Committee or National Committee to Preserve Social Security and Medicare PAC violated the  
10 Federal Election Campaign Act of 1971, as amended (the "Act").

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Factual Background**  
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14 Shea-Porter was a candidate for reelection in the First Congressional District of New  
15 Hampshire in 2014,<sup>2</sup> and Carol Shea-Porter for Congress is her principal campaign committee.  
16 During the 2014 election cycle, Susan Mayer was a part-time staffer in Shea-Porter's  
17 congressional district office in New Hampshire and volunteered part-time on her re-election  
18 campaign.<sup>3</sup> SVC is a non-connected committee that disclosed the receipt of a \$3,110  
19 contribution from Mayer on October 29, 2014, which was transmitted to SVC through ActBlue.<sup>4</sup>

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<sup>2</sup> Representative Shea-Porter lost her reelection bid on November 4, 2014. She ran again in 2016 for the same Congressional seat and was elected on November 8, 2016.

<sup>3</sup> Mayer Resp. at 1. See also <http://congressional-staff.insidegov.com>.

<sup>4</sup> SVC Resp. at 1; SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees. ActBlue Resp. at 1.

1 SVC disclosed Mayer's occupation and employer as "Not-Employed" and "N/A," respectively.<sup>5</sup>  
2 ActBlue, however, disclosed Mayer's occupation and employer as "Congressional Staffer" and  
3 "U.S. House of Representatives," respectively.<sup>6</sup> Also on October 29, 2014, SVC paid \$3,000 for  
4 two radio advertisements on behalf of Shea-Porter, according to an untimely 24-Hour Report of  
5 independent expenditures SVC filed on December 2, 2014. SVC did not disclose these  
6 independent expenditures on its 2014 Post-General Report. On January 5, 2015, the  
7 Commission's Reports Analysis Division ("RAD") sent SVC a Request for Additional  
8 Information ("RAI") concerning the untimely 24-Hour Report and SVC's failure to disclose the  
9 expenditures on its 2014 Post-General Report. SVC responded that it filed a 24-Hour Report as  
10 soon as it realized one had not been filed.<sup>7</sup> SVC has not amended its 2014 Post-General Report  
11 to disclose the independent expenditures.

12 SVC first disclosed debts to Kaufman Legal Group ("Kaufman") on its 2014 July  
13 Quarterly Report and has continuously reported debts to Kaufman on subsequent reports,  
14 including the most recent, its 2016 Year-End Report.<sup>8</sup> Kaufman is a law firm that specializes in  
15 campaign finance, election law, and governmental ethics, and it has a political compliance  
16 department.<sup>9</sup> SVC made two payments totaling \$2,237 to Kaufman in late 2014, which was the  
17 amount of debt to Kaufman disclosed on its 2014 July Quarterly Report, but those payments still

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<sup>5</sup> SVC 2014 Post-General Election Report at 6.

<sup>6</sup> ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

<sup>7</sup> SVC Miscellaneous Report to the Commission (Feb. 9, 2015). SVC filed its Post-General Report on December 4, 2014, two days after it reported the independent expenditure.

<sup>8</sup> On its 2014 July Quarterly Report, SVC reported a total of \$2,237 in debts owed to Kaufman for "legal and treasury fees" or for "legal and treasury expenses." See SVC 2014 July Quarterly Report at 7. On its 2016 Year-End Report, SVC reported a total of \$10,102 in debts owed to SVC, primarily for legal and treasury fees or legal and treasury expenses. See SVC 2016 Year-End Report at 6-18.

<sup>9</sup> See <http://www.kaufmanlegalgroup.com>. Kaufman is also representing SVC in this matter.

1 left a balance due to Kaufman of \$4,174.52. Since then, SVC has continued to accrue debts to  
2 Kaufman, and has not reported any additional payments to Kaufman.

3 **B. Legal Analysis**

4 1. Coordination

5 Under the Act, an expenditure made by any person in cooperation, consultation, or concert  
6 with, or at the request or suggestion of, a candidate, his or her authorized political committees, or  
7 their agents, is considered a contribution to such candidate.<sup>10</sup> Communications that are paid for  
8 by a third party, but coordinated with a candidate, are also in-kind contributions to the  
9 candidate.<sup>11</sup> Under Commission regulations, a communication is coordinated if it: (1) is paid for  
10 by a third party; (2) satisfies one of five content standards set forth at 11 C.F.R. § 109.21(c);<sup>12</sup> and  
11 (3) satisfies one of six conduct standards set forth at 11 C.F.R. § 109.21(d).<sup>13</sup>

12 Complainant alleges that Shea-Porter and the Committee coordinated with Mayer and  
13 SVC regarding Mayer's contribution that she earmarked for the Committee, resulting in an  
14 excessive contribution to the Committee.<sup>14</sup> In support, the Complaint alleges that Mayer and

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<sup>10</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a). The Act prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits set forth in the Act. 52 U.S.C. § 30116(f).

<sup>11</sup> 11 C.F.R. § 109.20.

<sup>12</sup> The content standards are a communication that is an electioneering communication; a public communication that disseminates, distributes, or republishes, in whole or in part, campaign material prepared by a candidate or the candidate's authorized committee; a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; a public communication referring to various types of federal candidates or to political parties that satisfies the requirements of 11 C.F.R. §§ 109.21(c)(4)(i), (ii), (iii) or (iv); and a public communication that is the functional equivalent of express advocacy. *See* 11 C.F.R. § 109.21(c).

<sup>13</sup> The conduct standards listed in 11 C.F.R. § 109.21(d) are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication.

<sup>14</sup> Compl at 1.

1 SVC representatives appeared at a Shea-Porter campaign event, and that there are professional  
2 relationships among SVC representatives, Mayer, and Shea-Porter.<sup>15</sup>

3 The Committee, Shea-Porter, Mayer, and SVC assert that there is no evidence of  
4 coordination.<sup>16</sup> The Committee and Shea-Porter further assert that there is no evidence that  
5 Mayer contributed to SVC specifically to fund radio ads on behalf of the Committee.<sup>17</sup> They also  
6 assert that even if there had been coordination, it would have resulted in a contribution that was  
7 only \$400 over SVC's contribution limit.<sup>18</sup>

8 Mayer also denies that she earmarked a contribution to the Committee through SVC, and  
9 thus, made an excessive contribution to the Committee. Mayer asserts that she made a  
10 contribution to SVC that was less than the \$5,000 limit.<sup>19</sup> Mayer argues that she did not attempt  
11 to hide her employment with Shea-Porter as ActBlue accurately reported her employment  
12 information.<sup>20</sup> Mayer also denies that she is in a photograph of a Shea-Porter campaign event that  
13 the Complainant submitted as proof of coordination.<sup>21</sup>

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<sup>15</sup> *Id.* at 8, 10.

<sup>16</sup> Shea-Porter and Committee Resp. at 2; Mayer Resp. at 5; SVC Resp. at 2.

<sup>17</sup> Shea-Porter and Committee Resp. at 2.

<sup>18</sup> *Id.* at 3. For the 2014 election cycle, no person was permitted to make contributions to a candidate for federal office or his authorized political committee which in the aggregate exceed \$2,600 for each election. 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b).

<sup>19</sup> Mayer Resp. at 2, 4. The Act permits a person to contribute up to \$5,000 per calendar year to other political committees that are not the national or state committees of a political party. 52 U.S.C. § 30116(a)(1)(C).

<sup>20</sup> Mayer Resp. at 4.

<sup>21</sup> *Id.* at 3.

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1 SVC's payment for the radio ads in support of Shea-Porter satisfies the payment prong,  
2 and the communication's nature satisfies the content prong.<sup>22</sup> As to the conduct prong, the  
3 Complaint relies on the alleged professional relationships among the various respondents, and  
4 the attendance by Mayer and representatives of other respondents at a Shea-Porter campaign  
5 event. This information, standing alone, does not satisfy any of the conduct standards set forth in  
6 11 C.F.R. § 109.21(d).<sup>23</sup>

7 Accordingly, we recommend that the Commission find no reason to believe that SVC or  
8 Mayer made, or Shea-Porter and the Committee accepted, an excessive contribution. We further  
9 recommend that the Commission find no reason to believe that the Committee failed to report an  
10 excessive contribution from SVC or from Mayer.

## 11 2. Independent Expenditure Reporting

12 The Act requires a person (including a political committee) that makes or contracts to  
13 make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24  
14 hours, before the date of an election to file a report describing the expenditures within 24  
15 hours.<sup>24</sup> The Act also requires political committees other than authorized committees to disclose  
16 independent expenditures on their regularly scheduled reports.<sup>25</sup>

17 The Complaint alleges that SVC failed to file a 24-Hour Report disclosing its  
18 independent expenditures.<sup>26</sup> SVC filed its 24-Hour Report on December 2, 2014—after the

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<sup>22</sup> See 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the radio ads are public communications that clearly identify a federal candidate, Shea-Porter, fewer than 90 days before the candidate's election. See 11 C.F.R. § 109.21(c)(4)(i).

<sup>23</sup> 11 C.F.R. § 109.21(d).

<sup>24</sup> 52 U.S.C. § 30104(g). See also 11 C.F.R. § 104.4(c).

<sup>25</sup> 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(3)(vii)(A).

<sup>26</sup> Compl. at 1.

1 election and 33 days late—disclosing \$3,000 in independent expenditures.<sup>27</sup> In addition, SVC  
2 did not report the \$3,000 expenditure on its subsequent disclosure report, the 2014 Post-General  
3 Report. However, in light of the small amount at issue, we recommend that the Commission  
4 exercise its prosecutorial discretion and dismiss these allegations.<sup>28</sup> We further recommend that  
5 the Commission caution SVC about its obligations to report independent expenditures.

### 6 3. Contributor Employment Reporting

7 The Act requires political committees to identify each person (other than a political  
8 committee) who makes a contribution to the committee, whose contribution or contributions in  
9 the aggregate exceed \$200 within the calendar year (or election cycle in the case of an authorized  
10 committee), together with the date and amount of any such contribution.<sup>29</sup> The identification of  
11 the contributor includes reporting the contributor's name, mailing address, occupation, and name  
12 of his or employer, if any.<sup>30</sup>

13 The intermediary or conduit of an earmarked contribution shall report the original source  
14 and the recipient candidate or authorized committee to the Commission and to the recipient  
15 candidate or authorized committee.<sup>31</sup> The report by the conduit or intermediary shall contain the

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<sup>27</sup> See SVC 24-Hour Independent Expenditure Report (Dec. 2, 2014) and SVC Miscellaneous Report to the Commission (Feb. 9, 2015). SVC asserts that it did not intentionally delay the filing of its 24-Hour Report. SVC Resp. at 3.

<sup>28</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985). The Committee's reporting violations did not meet the standard for referral to this office or the Alternative Dispute Resolution Office, See 2013-2014 RAD Review and Referral Procedures, Standard 7 at 73, 74.

<sup>29</sup> See 52 U.S.C. § 30104(b)(3)(A).

<sup>30</sup> See 52 U.S.C. § 30101(13). See also 11 C.F.R. § 104.8(a).

<sup>31</sup> See 11 C.F.R. § 110.6(c).

1 name and mailing address of each contributor, and for each earmarked contribution in excess of  
2 \$200, the contributor's occupation and name of his or her employer.<sup>32</sup>

3 Complainant questions whether ActBlue forwards accurate employer and occupation  
4 information for earmarked contributions passed through it.<sup>33</sup> Complainant also alleges that SVC  
5 "intentionally changed" its disclosure report by listing Mayer's employment status as  
6 "unemployed" even though SVC should have known that the Committee employed her.<sup>34</sup> In  
7 support, Complainant points to SVC's involvement and familiarity with Shea-Porter's campaign,  
8 noting that SVC's co-founder appeared in support of Shea-Porter's 2012 and 2014 campaigns.<sup>35</sup>

9 ActBlue asserts that on its contribution form, Mayer reported her employment status as  
10 "unemployed," and it forwarded that information to SVC.<sup>36</sup> ActBlue's response, however,  
11 conflicts with its disclosure report, which disclosed Mayer's occupation and employer  
12 information as "Congressional staffer" and "U.S. House of Representatives," respectively.<sup>37</sup>  
13 For its part, SVC denies that it tried to cover up Mayer's contribution by reporting she was  
14 unemployed, and it provides a document it states it received from ActBlue listing Mayer's  
15 occupation as "not employed" and her employer as "None."<sup>38</sup>

16 While it appears that SVC reported the contributor information that ActBlue provided,  
17 that information was incorrect, thus, SVC did not accurately report Mayer's employment

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<sup>32</sup> 11 C.F.R. § 110.6(c)(1)(iv)(A).

<sup>33</sup> Compl. at 25.

<sup>34</sup> *Id.* at 2.

<sup>35</sup> *Id.* at 8.

<sup>36</sup> *Id.*

<sup>37</sup> ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

<sup>38</sup> SVC Resp. at 2 and attached document. *See* SVC's 2014 Post-General Election Report at 6.



1 credit includes, but is not limited to: (1) any agreement between the creditor and political  
2 committee that full payment is not due until after the creditor provides goods or services to the  
3 political committee; (2) any agreement between the creditor and political committee that the  
4 political committee will have additional time to pay the creditor beyond the previously agreed-to  
5 due date; and (3) the failure of the political committee to make full payment to the creditor by a  
6 previously agreed-to due date.<sup>46</sup> A commercial vendor is any person who provides goods or  
7 services to a candidate or political committee, and whose usual and normal business involves the  
8 sale, rental, lease, or provision of those goods or services.<sup>47</sup>

9 In assessing whether a commercial vendor extended credit in the ordinary course of  
10 business, and thus did not make a contribution, the Commission will consider: (1) whether the  
11 commercial vendor followed its established procedures and its past practice in approving the  
12 extension of credit; (2) whether the commercial vendor received prompt payment in full if it  
13 previously extended credit to the same candidate or political committee; and (3) whether the  
14 extension of credit conformed to the usual and normal practice in the commercial vendor's trade  
15 or industry.<sup>48</sup> A contribution also will result if a creditor fails to make a commercially  
16 reasonable attempt to collect the debt.<sup>49</sup> Finally, the Act requires committee treasurers to file  
17 reports of receipts and disbursements, including the appropriate itemizations, where required.<sup>50</sup>

18 In previous cases, the Commission has found reason to believe that a committee has  
19 received prohibited contributions where it failed to repay credit extended by commercial vendors

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<sup>46</sup> See 11 C.F.R. § 116.1(e).

<sup>47</sup> See 11 C.F.R. § 116.1(c).

<sup>48</sup> See 11 C.F.R. § 116.3(c).

<sup>49</sup> See 11 C.F.R. § 100.55.

<sup>50</sup> 52 U.S.C. § 30104(a), (b).

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1 where respondents provided little or no information demonstrating that they made extensions of  
2 credit in the ordinary course of business.<sup>51</sup>

3 Kaufman is a law firm, and it provided legal and political compliance services to SVC.  
4 Thus, it appears to be a commercial vendor. Kaufman denies that it has made a contribution to  
5 SVC, but states that SVC has not paid it due to "limited fundraising."<sup>52</sup> Kaufman maintains that  
6 it has not decided to forgive SVC's debts,<sup>53</sup> which, as of the date of SVC's most recent report,  
7 are \$10,102. SVC does not address the allegation that Kaufman has forgiven its debt to  
8 Kaufman.

9 Kaufman has not provided information demonstrating that it followed established  
10 procedures and past practice in extending credit to SVC, that it received prompt payment in full  
11 for previous extensions of credit to SVC, or that its extension of credit to SVC conformed to  
12 the usual and normal practice in its trade or industry.<sup>54</sup> We also do not have information on  
13 Kaufman's collection practices or how it treats nonpolitical debtors. Furthermore, Kaufman has  
14 not provided information that it acted in a commercially reasonable manner in attempting to  
15 collect its debt. While there is information that in late November 2014 Kaufman collected some  
16 of the debt SVC owed, SVC has not reported any further payments to Kaufman.<sup>55</sup> As mentioned

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<sup>51</sup> See MUR 4803 (Tierney for Congress) (debt to the vendor was \$13,000). See also MUR 6101 (Heller for Congress) and MUR 5635 (Conservative Leadership Political Action Committee), which involved larger debts. The potential prohibited in-kind contribution in this case exceeds \$10,000, an amount larger than others the Commission has pursued. See, e.g., MUR 6857 (Marilinda Garcia for Congress) (Commission found reason to believe that corporate officer consented to the making of a \$4,485 prohibited corporate contribution) (open matter).

<sup>52</sup> Kaufman Resp. at 2.

<sup>53</sup> *Id.*

<sup>54</sup> See 11 C.F.R. § 116.3.

<sup>55</sup> As noted above, SVC's November 2014 payment reduced its debt to Kaufman to \$4,174.52. Since then, SVC has reported the debt increasing on five of its seven succeeding reports, and no payments to Kaufman.

1 earlier, SVC disclosed debts of \$10,102 to Kaufman on its 2016 Year-End Report, its most  
2 recent report, and Kaufman continues to represent SVC, possibly increasing the size of the debt.

3 Because additional fact finding is necessary here, we recommend that the Commission  
4 find reason to believe that Kaufman made, and SVC accepted, prohibited contributions in the  
5 form of an extension of credit for legal and treasury fees and expenses and did not disclose those  
6 contributions.<sup>56</sup>

#### 7 5. Other Alleged In-Kind Contributions

8 The Act defines "contribution" to include "any gift, subscription, loan, advance, or  
9 deposit of money or anything of value made by any person for the purpose of influencing any  
10 election for Federal office."<sup>57</sup> "Anything of value" includes all in-kind contributions and, unless  
11 otherwise exempted, the provision of any goods or services without charge or at a charge that is  
12 less than the usual and normal charge for such goods or services.<sup>58</sup>

#### 13 a. Democratic Congressional Campaign Committee ("DCCC")

14 Complainant, relying on an entry on the DCCC's disclosure report, alleges that it  
15 coordinated with SVC on the radio ads described earlier.<sup>59</sup> The DCCC asserts that its \$355  
16 expenditure on October 30, 2014, was for shipping costs for its own advertisement, not SVC's

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<sup>56</sup> In making these recommendations, we considered the applicability of the exception to the definition of "contribution" at 52 U.S.C. § 30101(8)(B)(viii) and 11 C.F.R. § 100.86 for legal and accounting services provided to political committees for compliance purposes. However, the available record suggests that this exception does not apply: neither Kaufman nor SVC argues that this exception applies, Kaufman billed for these services (as opposed to donating them), Kaufman states that it has not decided to waive its fees; and SVC reported the fees as debts. Should respondents present information that this exception does apply, we will make the appropriate recommendations at the close of the proposed investigation.

<sup>57</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>58</sup> 11 C.F.R. § 100.52(d)(1).

<sup>59</sup> Compl. at 25, 28.

1 radio ads.<sup>60</sup> We have no information to the contrary. Based upon the DCCC's explanation, it  
2 does not appear to have coordinated its expenditure with SVC.

3 b. National Committee to Preserve Social Security  
4 and Medicare PAC ("NCP-PAC")

5 Complainant alleges that NCP-PAC coordinated with SVC by announcing its support for  
6 Shea-Porter on the same day that SVC made independent expenditures on behalf of Shea-Porter,  
7 and that NCP-PAC made a contribution to Shea-Porter's campaign because two of SVC's  
8 founders previously worked at NCP-PAC.<sup>61</sup> NCP-PAC asserts that its only contribution to Shea-  
9 Porter during the 2014 election cycle was on September 26, 2013, more than a year before the  
10 alleged coordination, and six months before SVC's establishment.<sup>62</sup> NCP-PAC also asserts that  
11 SVC's founders worked at NCP-PAC in 2012 and 2013, which was also well before SVC's  
12 establishment and the alleged coordination.<sup>63</sup> The alleged relationships, without more, do not  
13 indicate any in-kind contribution by NCP-PAC to SVC or to Shea-Porter.

14 c. NGP VAN, Inc.

15 Complainant alleges that NGP VAN, a software vendor that provided services to the  
16 Committee and SVC, did not collect payments from them.<sup>64</sup> NGP VAN asserts that it did not  
17 forgive debts to SVC.<sup>65</sup> NGP VAN provided documents showing it adjusted SVC's account

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<sup>60</sup> DCCC Resp. at 1 and attached invoice.

<sup>61</sup> Compl. at 25.

<sup>62</sup> NCP-PAC Resp. at 1. *See also* NCP-PAC's 2013 October Monthly Report at 17 (Oct. 7, 2013).

<sup>63</sup> NCP-PAC Resp. at 2.

<sup>64</sup> Suppl. Compl. at 1. The Supplemental Complaint solely concerns allegations as to NGP VAN, SVC, and the Committee. Suppl. Compl. at 1. The Supplemental Complaint states that the issue of NGP VAN "was not thoroughly addressed" in the Complaint, and alleges that NGP VAN made in-kind contributions to SVC and the Committee by forgiving certain debts. *Id.*

<sup>65</sup> NGP VAN Resp. to Suppl. Compl. at 1.

1 \$550 to correct billing errors.<sup>66</sup> Regarding the allegation that NGP VAN also provided “credits’  
2 to outstanding debt on the [Committee’s] filings,” the Supplemental Complaint provides no  
3 information or description of such credits. During the 2014 election cycle, the Committee  
4 reported payments to NGP VAN for software services, but there is no information regarding  
5 credits NGP VAN extended to the Committee. NGP VAN asserts there is no record of any debt  
6 the Committee owes,<sup>67</sup> the Committee has disclosed none, and we have no information to the  
7 contrary. Thus, NGP VAN does not appear to have made any prohibited in-kind contributions to  
8 SVC or the Committee.<sup>68</sup>

### 9 III. PROPOSED INVESTIGATION

10 In order to determine whether Kaufman made an extension of credit to SVC in the  
11 normal course of business, we plan to request information from Kaufman, documentation of its  
12 credit arrangements with SVC including its attempts to collect the outstanding debts, and its  
13 credit and collection efforts for similarly situated non-political customers. We also plan to  
14 request similar documentation from SVC regarding credit arrangements with Kaufman.  
15 Although we plan to use informal investigative methods, we recommend that the Commission  
16 authorize the use of compulsory process, in the event the parties do not cooperate in providing  
17 this information.

### 18 IV. RECOMMENDATIONS

- 19 1. Dismiss the allegations that Senior Votes Count and Tony Fazio in his official  
20 capacity as treasurer violated 52 U.S.C. § 30104(b) and (g) by failing to timely file a  
21 24-Hour Independent Expenditure Report, failing to disclose independent

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<sup>66</sup> *Id.* and attached Credit Memo.

<sup>67</sup> NGP VAN Resp. to Suppl. Compl at 1.

<sup>68</sup> *See* 52 U.S.C. § 30118(a).

- 1 expenditures on its 2014 Post-General Report, and failing to report accurate employer  
2 information for a contribution, and send a caution letter.  
3  
4 2. Find no reason to believe that Senior Votes Count and Tony Fazio in his official  
5 capacity as treasurer violated 52 U.S.C. § 30104(b) by failing to report in-kind  
6 contributions or 52 U.S.C. § 30116(a) by making excessive contributions in  
7 connection with alleged coordinated radio advertisements.  
8  
9 3. Find no reason to believe that Carol Shea-Porter violated 52 U.S.C. § 30116(f).  
10  
11 4. Find no reason to believe that Carol Shea-Porter for Congress and Mary DiModika-  
12 Kulju in her official capacity as treasurer violated 52 U.S.C. §§ 30104(b), 30116(f) or  
13 30118(a).  
14  
15 5. Find no reason to believe that Susan D. Mayer violated 52 U.S.C. § 30116(a).  
16  
17 6. Dismiss the allegation that ActBlue and Erin Hill in her official capacity as treasurer  
18 violated 11 C.F.R. § 110.6(c)(1)(iv), and send a caution letter.  
19  
20 7. Find reason to believe that Kaufman Legal Group violated 52 U.S.C. § 30118(a).  
21  
22 8. Find reason to believe that Senior Votes Count and Tony Fazio in his official capacity  
23 as treasurer violated 52 U.S.C. §§ 30118(a) and 30104(b) by accepting and not  
24 reporting prohibited contributions in the form of debts not paid.  
25  
26 9. Find no reason to believe that Senior Votes Count and Tony Fazio in his official  
27 capacity as treasurer violated 52 U.S.C. § 30118(a) by receiving credits from a vendor  
28 based on billing errors.  
29  
30 10. Find no reason to believe that the Democratic Congressional Campaign  
31 Committee and Kelly Ward in her official capacity as treasurer violated the Act.  
32  
33 11. Find no reason to believe the National Committee to Preserve Social Security and  
34 Medicare PAC and Christine Kim in her official capacity as treasurer violated the  
35 Act.  
36  
37 12. Find no reason to believe that NGP VAN, Inc. violated 52 U.S.C. § 30118(a).  
38  
39 13. Close the file as to Carol Shea-Porter, Carol Shea-Porter for Congress and Mary  
40 DiModika-Kulju in her official capacity as treasurer, Susan Mayer, ActBlue and Erin  
41 Hill in her official capacity as treasurer, Democratic Congressional Campaign  
42 Committee and Kelly Ward in her official capacity as treasurer, National Committee  
43 to Preserve Social Security and Medicare PAC and Christine Kim in her official  
44 capacity as treasurer, and NGP VAN, Inc.  
45  
46 14. Approve the attached Factual and Legal Analyses.

1  
2 15. Authorize compulsory process, as necessary.

3  
4 16. Approve the appropriate letters.

5  
6  
7 Lisa J. Stevenson  
8 Acting General Counsel

9  
10 Kathleen M. Guith  
11 Associate General Counsel for Enforcement

12  
13  
14 6.9.17  
15 Date

16   
17 \_\_\_\_\_  
18 Stephen A. Gura  
19 Deputy Associate General Counsel

20   
21 \_\_\_\_\_  
22 Mark Allen  
23 Assistant General Counsel

24   
25 \_\_\_\_\_  
26 Delbert K. Rigsby  
27 Attorney

28  
29 Attachments

- 30  
31 2. Factual and Legal Analysis for Carol Shea-Porter and Carol Shea-Porter for Congress  
32 3. Factual and Legal Analysis for Susan D. Mayer  
33 4. Factual and Legal Analysis for ActBlue  
34  
35 6. Factual and Legal Analysis for Democratic Congressional Campaign Committee  
36 7. Factual and Legal Analysis for National Committee to Preserve Social Security and  
37 Medicare PAC  
38 8. Factual and Legal Analysis for NGP VAN, Inc.

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENTS: Carol Shea-Porter and Carol Shea- Porter for Congress MUR 7131  
6 and Mary DiModika-Kulju in her official capacity  
7 as treasurer  
8

9 **I. INTRODUCTION**

10 The Complainant alleges that Representative Carol Shea-Porter and Carol Shea-Porter for  
11 Congress ("Committee") coordinated with Susan D. Mayer, a Shea-Porter congressional staffer,  
12 and Senior Votes Count ("SVC"), a non-connected committee, regarding a \$3,110 contribution  
13 that Mayer made to SVC, which was purportedly used to make undisclosed independent  
14 expenditures supporting Shea-Porter shortly before the 2014 general election. The Complainant  
15 also alleges that the National Committee to Preserve Social Security and Medicare PAC  
16 coordinated its actions with SVC to support Shea-Porter. Finally, a supplement to the Complaint  
17 alleges that NGP VAN, Inc., credited services to the Committee, resulting in in-kind  
18 contributions.

19 The Committee denies the coordination allegations, which are not supported by the  
20 available information. The Commission also finds that there is no reason to believe that the  
21 Committee accepted an excessive contribution and failed to report it. Further, the Commission  
22 finds that there is no reason to believe that the Committee accepted prohibited contributions.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3  
4 Shea-Porter was a candidate for reelection in the First Congressional District of New  
5 Hampshire in 2014,<sup>1</sup> and Carol Shea-Porter for Congress is her principal campaign committee.  
6 During the 2014 election cycle, Susan Mayer was a part-time staffer in Shea-Porter's  
7 congressional district office in New Hampshire and volunteered part-time on her re-election  
8 campaign.<sup>2</sup> SVC is a non-connected committee that disclosed the receipt of a \$3,110  
9 contribution from Mayer on October 29, 2014, which was transmitted to SVC through ActBlue.<sup>3</sup>  
10 SVC disclosed Mayer's occupation and employer as "Not-Employed" and "N/A," respectively.<sup>4</sup>  
11 ActBlue, however, disclosed Mayer's occupation and employer as "Congressional Staffer" and  
12 "U.S. House of Representatives," respectively.<sup>5</sup> Also on October 29, 2014, SVC paid \$3,000 for  
13 two radio advertisements on behalf of Shea-Porter, according to an untimely 24-Hour Report of  
14 independent expenditures SVC filed on December 2, 2014.

---

<sup>1</sup> Representative Shea-Porter lost her reelection bid on November 4, 2014. She ran again in 2016 for the same Congressional seat and was elected on November 8, 2016.

<sup>2</sup> See <http://congressional-staff.insidegov.com>.

<sup>3</sup> SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees. ActBlue Resp. at 1.

<sup>4</sup> SVC 2014 Post-General Election Report at 6.

<sup>5</sup> ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

1           **B.     Legal Analysis**

2                   1.     Coordination

3           Under the Federal Election Campaign Act of 1971, as amended (the “Act”), an  
4 expenditure made by any person in cooperation, consultation, or concert with, or at the request or  
5 suggestion of, a candidate, his or her authorized political committees, or their agents, is  
6 considered a contribution to such candidate.<sup>6</sup> Communications that are paid for by a third party,  
7 but coordinated with a candidate, are also in-kind contributions to the candidate.<sup>7</sup> Under  
8 Commission regulations, a communication is coordinated if it: (1) is paid for by a third party;  
9 (2) satisfies one of five content standards set forth at 11 C.F.R. § 109.21(c);<sup>8</sup> and (3) satisfies one  
10 of six conduct standards set forth at 11 C.F.R. § 109.21(d).<sup>9</sup>

11           Complainant alleges that Shea-Porter and the Committee coordinated with Mayer and  
12 SVC regarding Mayer’s contribution that she earmarked for the Committee, resulting in an  
13 excessive contribution to the Committee.<sup>10</sup> In support, the Complaint alleges that Mayer and

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<sup>6</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a). The Act prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits set forth in the Act. 52 U.S.C. § 30116(f).

<sup>7</sup> 11 C.F.R. § 109.20.

<sup>8</sup> The content standards are a communication that is an electioneering communication; a public communication that disseminates, distributes, or republishes, in whole or in part, campaign material prepared by a candidate or the candidate’s authorized committee; a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; a public communication referring to various types of federal candidates or to political parties that satisfies the requirements of 11 C.F.R. §§ 109.21(c)(4)(i), (ii), (iii) or (iv); and a public communication that is the functional equivalent of express advocacy. *See* 11 C.F.R. § 109.21(c).

<sup>9</sup> The conduct standards listed in 11 C.F.R. § 109.21(d) are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication.

<sup>10</sup> Compl at 1.

1 SVC representatives appeared at a Shea-Porter campaign event, and that there are professional  
2 relationships among SVC representatives, Mayer, and Shea-Porter.<sup>11</sup>

3 The Committee and Shea-Porter assert that there is no evidence of coordination with other  
4 respondents.<sup>12</sup> They also assert that there is no evidence that Mayer contributed to SVC  
5 specifically to fund radio ads on behalf of the Committee.<sup>13</sup> Even if there had been coordination,  
6 they further assert, it would have resulted in a contribution that was only \$400 over SVC's  
7 contribution limit.<sup>14</sup> There is information available that Mayer does not appear in a photograph of  
8 a Shea-Porter campaign event that the Complainant submitted as proof of coordination.

9 SVC's payment for the radio ads in support of Shea-Porter satisfies the payment prong,  
10 and the communication's nature satisfies the content prong.<sup>15</sup> As to the conduct prong, the  
11 Complaint relies on the alleged professional relationships among the various respondents, and  
12 the attendance by Mayer and representatives of other respondents at a Shea-Porter campaign  
13 event. This information, standing alone, does not satisfy any of the conduct standards set forth in  
14 11 C.F.R. § 109.21(d).<sup>16</sup>

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<sup>11</sup> *Id.* at 8, 10.

<sup>12</sup> Shea-Porter and Committee Resp. at 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 3. For the 2014 election cycle, no person was permitted to make contributions to a candidate for federal office or his authorized political committee which in the aggregate exceed \$2,600 for each election. 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b).

<sup>15</sup> See 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the radio ads are public communications that clearly identify a federal candidate, Shea-Porter, fewer than 90 days before the candidate's election. See 11 C.F.R. § 109.21(c)(4)(i).

<sup>16</sup> 11 C.F.R. § 109.21(d).

1 Accordingly, the Commission found that there is no reason to believe that Shea-Porter and  
2 the Committee violated 52 U.S.C. § 30116(f) by accepting an excessive contribution from SVC or  
3 Susan Mayer. Further, the Commission found that there is no reason to believe that the  
4 Committee violated 52 U.S.C. § 30104(b) by failing to report an excessive contribution from SVC  
5 or from Mayer.

6 2. Other Alleged In-Kind Contributions

7 The Act defines “contribution” to include “any gift, subscription, loan, advance, or  
8 deposit of money or anything of value made by any person for the purpose of influencing any  
9 election for Federal office.”<sup>17</sup> “Anything of value” includes all in-kind contributions and, unless  
10 otherwise exempted, the provision of any goods or services without charge or at a charge that is  
11 less than the usual and normal charge for such goods or services.<sup>18</sup>

12 The Act and Commission regulations prohibit corporations from making contributions to  
13 a federal political committee (other than independent-expenditure-only political committees),<sup>19</sup>  
14 and a political committee is prohibited from knowingly accepting or receiving such  
15 contributions.<sup>20</sup>

16 The Complainant alleges that the National Committee to Preserve Social Security and  
17 Medicare PAC (“NCP-PAC”) coordinated its actions with SVC to support Shea-Porter by  
18 announcing its support for Shea-Porter on the same day that SVC made independent

<sup>17</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>18</sup> 11 C.F.R. § 100.52(d)(1).

<sup>19</sup> *See, e.g.*, Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

<sup>20</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

1 expenditures on behalf of Shea-Porter, and that NCP-PAC made a contribution to Shea-Porter's  
2 campaign because two of SVC's founders previously worked at NCP-PAC.<sup>21</sup> NCP-PAC asserts  
3 that its only contribution to Shea-Porter during the 2014 election cycle was on September 26,  
4 2013, more than a year before the alleged coordination, and six months before SVC's  
5 establishment.<sup>22</sup> NCP-PAC also asserts that SVC's founders worked at NCP-PAC in 2012 and  
6 2013, which was also well before SVC's establishment and the alleged coordination.<sup>23</sup> The  
7 alleged relationships, without more, do not indicate any in-kind contribution by NCP-PAC to  
8 SVC or to Shea-Porter. Therefore, the Commission finds no reason to believe that the  
9 Committee violated 52 U.S.C. § 30116(f) by receiving an excessive contribution from NCP-  
10 PAC.

11 Complainant also alleges that NGP VAN, a software vendor that provided services to the  
12 Committee, did not collect payments from it, specifically, that it provided "'credits' to  
13 outstanding debt on the [Committee's] filings."<sup>24</sup> The Supplemental Complaint, however,  
14 provides no information or description of such credits. During the 2014 election cycle, the  
15 Committee reported payments to NGP VAN for software services, but there is no information  
16 regarding credits NGP VAN extended to the Committee. The available information does not  
17 indicate any record of any debt the Committee owes to NGP VAN and the Committee has  
18 disclosed none. Thus, the Committee does not appear to have accepted any in-kind contributions

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<sup>21</sup> Compl. at 25.

<sup>22</sup> NCP-PAC Resp. at 1. *See also* NCP-PAC's 2013 October Monthly Report at 17 (Oct. 7, 2013).

<sup>23</sup> NCP-PAC Resp. at 2.

<sup>24</sup> Suppl. Compl. at 1. The Supplemental Complaint states that the issue of NGP VAN "was not thoroughly addressed" in the Complaint, and alleges that NGP VAN made in-kind contributions to the Committee by forgiving certain debts. *Id.*

- 1 from NGP VAN. Therefore, the Commission finds no reason to believe that the Committee
- 2 violated 52 U.S.C. § 30118 by accepting a prohibited contribution from NGP VAN, Inc.

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1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENT: Susan D. Mayer

MUR 7131

6  
7 **I. INTRODUCTION**

8 The Complainant alleges that Representative Carol Shea-Porter and Carol Shea-Porter for  
9 Congress ("Committee") coordinated with Susan D. Mayer, a Shea-Porter congressional staffer,  
10 and Senior Votes Count ("SVC"), a non-connected committee, regarding a \$3,110 contribution  
11 that Mayer made to SVC.<sup>1</sup>

12 Mayer denies the coordination allegations, which are not supported by the available  
13 information. For the reasons below, the Commission finds that there is no reason to believe that  
14 Mayer made an excessive contribution to SVC or the Committee.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

17  
18 Shea-Porter was a candidate for reelection in the First Congressional District of New  
19 Hampshire in 2014,<sup>2</sup> and Carol Shea-Porter for Congress is her principal campaign committee.  
20 During the 2014 election cycle, Susan Mayer was a part-time staffer in Shea-Porter's  
21 congressional district office in New Hampshire and volunteered part-time on her re-election  
22 campaign.<sup>3</sup> SVC disclosed the receipt of a \$3,110 contribution from Mayer on October 29,

---

<sup>1</sup> Additionally, Complainant alleges that by making the resulting contribution to the Committee, Mayer violated the ethics rules of the U.S. House of Representatives and a federal statute, 18 U.S.C. § 603, prohibiting a congressional staffer from donating, directly or indirectly, to his or her employer's campaign. Compl. at 1. The Commission does not have jurisdiction over violations of 18 U.S.C. § 603.

<sup>2</sup> Representative Shea-Porter lost her reelection bid on November 4, 2014. She ran again in 2016 for the same Congressional seat, and was elected on November 8, 2016.

<sup>3</sup> Mayer Resp. at 1. See <http://congressional-staff.insidegov.com>.

1 2014, which was transmitted to SVC through ActBlue.<sup>4</sup> SVC disclosed Mayer's occupation and  
2 employer as "Not-Employed" and "N/A," respectively.<sup>5</sup> ActBlue, however, disclosed Mayer's  
3 occupation and employer as "Congressional Staffer" and "U.S. House of Representatives,"  
4 respectively.<sup>6</sup> Also on October 29, 2014, SVC paid \$3,000 for two radio advertisements on  
5 behalf of Shea-Porter, according to an untimely 24-Hour Report of independent expenditures  
6 SVC filed on December 2, 2014.

7 **B. Legal Analysis**

8 1. Coordination

9 Under the Act, an expenditure made by any person in cooperation, consultation, or concert  
10 with, or at the request or suggestion of, a candidate, his or her authorized political committees, or  
11 their agents, is considered a contribution to such candidate.<sup>7</sup> Communications that are paid for by  
12 a third party, but coordinated with a candidate, are also in-kind contributions to the candidate.<sup>8</sup>  
13 Under Commission regulations, a communication is coordinated if it: (1) is paid for by a third

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<sup>4</sup> SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees.

<sup>5</sup> SVC 2014 Post-General Election Report at 6.

<sup>6</sup> ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

<sup>7</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a). The Act prohibits a candidate or political committee from knowingly accepting contributions in violation of the contribution limits set forth in the Act. 52 U.S.C. § 30116(f).

<sup>8</sup> 11 C.F.R. § 109.20.

1 party; (2) satisfies one of five content standards set forth at 11 C.F.R. § 109.21(c);<sup>9</sup> and

2 (3) satisfies one of six conduct standards set forth at 11 C.F.R. § 109.21(d).<sup>10</sup>

3 Complainant alleges that Shea-Porter and the Committee coordinated with Mayer and  
4 SVC regarding Mayer's contribution that she earmarked for the Committee, resulting in an  
5 excessive contribution to the Committee.<sup>11</sup> In support, the Complaint alleges that Mayer and  
6 SVC representatives appeared at a Shea-Porter campaign event, and that there are professional  
7 relationships among SVC representatives, Mayer, and Shea-Porter.<sup>12</sup>

8 Mayer asserts that there is no evidence of coordination by her with other respondents.<sup>13</sup>  
9 Mayer denies that she earmarked a contribution to the Committee through SVC, and thus, made  
10 an excessive contribution to the Committee. Mayer asserts that she made a contribution to SVC  
11 that was less than the \$5,000 limit.<sup>14</sup> Mayer argues that she did not attempt to hide her  
12 employment with Shea-Porter as ActBlue accurately reported her employment information.<sup>15</sup>

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<sup>9</sup> The content standards are a communication that is an electioneering communication; a public communication that disseminates, distributes, or republishes, in whole or in part, campaign material prepared by a candidate or the candidate's authorized committee; a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; a public communication referring to various types of federal candidates or to political parties that satisfies the requirements of 11 C.F.R. §§ 109.21(c)(4)(i), (ii), (iii) or (iv); and a public communication that is the functional equivalent of express advocacy. *See* 11 C.F.R. § 109.21(c).

<sup>10</sup> The conduct standards listed in 11 C.F.R. § 109.21(d) are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication.

<sup>11</sup> Compl at 1.

<sup>12</sup> *Id.* at 8, 10.

<sup>13</sup> Mayer Resp. at 5.

<sup>14</sup> *Id.* at 2, 4. The Act permits a person to contribute up to \$5,000 per calendar year to other political committees that are not the national or state committees of a political party. 52 U.S.C. § 30116(a)(1)(C).

<sup>15</sup> Mayer Resp. at 4.

1 Mayer also denies that she is in a photograph of a Shea-Porter campaign event that the  
2 Complainant submitted as proof of coordination.<sup>16</sup>

3 SVC's payment for the radio ads in support of Shea-Porter satisfies the payment prong,  
4 and the communication's nature satisfies the content prong.<sup>17</sup> As to the conduct prong, the  
5 Complaint relies on the alleged professional relationships among the various respondents, and  
6 the attendance by Mayer and representatives of other respondents at a Shea-Porter campaign  
7 event. This information, standing alone, does not satisfy any of the conduct standards set forth in  
8 11 C.F.R. § 109.21(d).<sup>18</sup>

9 Accordingly, the Commission finds that there is no reason to believe that Susan D. Mayer  
10 violated 52 U.S.C. § 30116(a) by making an excessive contribution to SVC or the Committee.

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<sup>16</sup> *Id.* at 3.

<sup>17</sup> *See* 11 C.F.R. § 109.21(a)(1). The content prong is satisfied because the radio ads are public communications that clearly identify a federal candidate, Shea-Porter, fewer than 90 days before the candidate's election. *See* 11 C.F.R. § 109.21(c)(4)(i).

<sup>18</sup> 11 C.F.R. § 109.21(d).

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENTS: ActBlue and Erin Hill in her official  
6 capacity as treasurer

MUR 7131

7  
8 **I. INTRODUCTION**

9 The Complainant in the matter alleges that ActBlue may not be forwarding accurate  
10 employment information on contributions thorough which it serves as an intermediary.  
11 ActBlue denies the reporting allegation. For the reasons below, the Commission dismisses with  
12 caution the allegation that ActBlue failed to accurately report occupation and employer  
13 information on a contribution.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Factual Background**

16  
17 Representative Carol Shea-Porter was a candidate for reelection in the First  
18 Congressional District of New Hampshire in 2014,<sup>1</sup> and Carol Shea-Porter for Congress is her  
19 principal campaign committee. During the 2014 election cycle, Susan Mayer was a part-time  
20 staffer in Shea-Porter's congressional district office in New Hampshire and volunteered part-  
21 time on her re-election campaign.<sup>2</sup> Senior Votes Count ("SVC") is a non-connected committee  
22 that disclosed the receipt of a \$3,110 contribution from Mayer on October 29, 2014, which was

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<sup>1</sup> Representative Shea-Porter lost her reelection bid on November 4, 2014. She ran again in 2016 for the same Congressional seat, and was elected on November 8, 2016.

<sup>2</sup> See <http://congressional-staff.insidegov.com/>.

1 transmitted to SVC through ActBlue.<sup>3</sup> SVC disclosed Mayer's occupation and employer as  
2 "Not-Employed" and "N/A," respectively.<sup>4</sup> ActBlue, however, disclosed Mayer's occupation  
3 and employer as "Congressional Staffer" and "U.S. House of Representatives," respectively.<sup>5</sup>

4 **B. Legal Analysis**

5 The Federal Election Campaign Act of 1971, as amended (the "Act") requires political  
6 committees to identify each person (other than a political committee) who makes a contribution  
7 to the committee, whose contribution or contributions in the aggregate exceed \$200 within the  
8 calendar year (or election cycle in the case of an authorized committee), together with the date  
9 and amount of any such contribution.<sup>6</sup> The identification of the contributor includes reporting  
10 the contributor's name, mailing address, occupation, and name of his or employer, if any.<sup>7</sup>

11 The intermediary or conduit of an earmarked contribution shall report the original source  
12 and the recipient candidate or authorized committee to the Commission and to the recipient  
13 candidate or authorized committee.<sup>8</sup> The report by the conduit or intermediary shall contain the

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<sup>3</sup> SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees. ActBlue Resp. at 1.

<sup>4</sup> SVC 2014 Post-General Election Report at 6.

<sup>5</sup> ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

<sup>6</sup> See 52 U.S.C. § 30104(b)(3)(A).

<sup>7</sup> See 52 U.S.C. § 30101(13). See also 11 C.F.R. § 104.8(a).

<sup>8</sup> See 11 C.F.R. § 110.6(c).

1 name and mailing address of each contributor, and for each earmarked contribution in excess of  
2 \$200, the contributor's occupation and name of his or her employer.<sup>9</sup>

3 Complainant questions whether ActBlue forwards accurate employer and occupation  
4 information for earmarked contributions passed through it.<sup>10</sup> ActBlue asserts that on its  
5 contribution form, Mayer reported her employment status as "unemployed," and it forwarded that  
6 information to SVC.<sup>11</sup> ActBlue's response, however, conflicts with its disclosure report, which  
7 disclosed Mayer's occupation and employer information as "Congressional staffer" and "U.S.  
8 House of Representatives," respectively.<sup>12</sup>

9 While it appears that SVC reported the contributor information that ActBlue provided,  
10 that information was incorrect. Nevertheless, the Commission exercised its prosecutorial  
11 discretion and dismisses the allegation that Act Blue violated 11 C.F.R. § 110.6(c)(1)(iv) because  
12 ActBlue accurately reported Mayer's occupation and employer information on its own reports,  
13 and the incorrect disclosure relates to one contributor who gave less than the statutory limit.<sup>13</sup>  
14 The Commission also cautions ActBlue about its reporting obligations.<sup>14</sup>

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<sup>9</sup> 11 C.F.R. § 110.6(c)(1)(iv)(A).

<sup>10</sup> Compl. at 25.

<sup>11</sup> *Id.*

<sup>12</sup> ActBlue 2014 Post-General Election Report at 329,743 (Dec. 4, 2014).

<sup>13</sup> *See Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>14</sup> *See* 11 C.F.R. § 110.6(c)(1)(iv)(A) (conduit or intermediary reporting contributor information to recipient committee); 11 C.F.R. § 104.7(b)(4) and 58 Fed. Reg. 57,725, 57,728 (Mar. 3, 1994) (Explanation and Justification) (if a committee receives contributor information after the contribution has been reported, it should either file an amended memo Schedule A with its next scheduled report, listing the contribution for which additional information was received including occupation and employer information, or file on or before the next scheduled report, amendments to the original reports on which the contributions were originally reported).

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENTS: Democratic Congressional Campaign Committee MUR 7131  
6 and Kelly Ward in her official capacity as treasurer  
7

8 **I. INTRODUCTION**

9 The Complainant in this matter alleges that the Democratic Congressional Campaign  
10 Committee (“DCCC”) coordinated on expenditures in Representative Carol Shea-Porter’s  
11 district. Shea-Porter was a candidate for reelection in the First Congressional District of New  
12 Hampshire in 2014, and Carol Shea-Porter for Congress is her principal campaign committee.  
13 The DCCC denies this allegation. For the reasons below, the Commission finds that there is no  
14 reason to believe that the DCCC violated the Federal Election Campaign Act of 1971, as  
15 amended (the “Act”).

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 Senior Votes Count (“SVC”) is a non-connected committee that disclosed the receipt of a  
18 \$3,110 contribution from Susan Mayer on October 29, 2014, which was transmitted to SVC  
19 through ActBlue.<sup>1</sup> Also on October 29, SVC paid \$3,000 for two radio advertisements on behalf  
20 of Shea-Porter, according to an untimely 24-Hour Report of independent expenditures SVC filed  
21 on December 2, 2014.

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<sup>1</sup> SVC 2014 Post-General Election Report at 6 (Dec. 4, 2014). ActBlue is a non-connected committee that acts as an intermediary for individual contributions made on its website to Democratic candidates and to political committees.

1 Under the Act, an expenditure made by any person in cooperation, consultation, or concert  
2 with, or at the request or suggestion of, a candidate, his or her authorized political committees, or  
3 their agents, is considered a contribution to such candidate.<sup>2</sup>

4 Complainant, relying on an entry on the DCCC's disclosure report, alleges that it  
5 coordinated with SVC on the radio ads described above.<sup>3</sup> The DCCC asserts that its \$355  
6 expenditure on October 30, 2014, was for shipping costs for its own advertisement, not SVC's  
7 radio ads.<sup>4</sup> The Commission has no information to the contrary. Based upon the DCCC's  
8 explanation, it does not appear to have coordinated its expenditure with SVC.

9 Therefore, in this matter, the Commission finds that there is no reason to believe that the  
10 Democratic Congressional Campaign Committee violated the Act.

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<sup>2</sup> 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20(a).

<sup>3</sup> Compl. at 25, 28.

<sup>4</sup> DCCC Resp. at 1 and attached invoice.

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 RESPONDENTS: National Committee to Preserve Social Security  
6 and Medicare PAC and Christine Kim in her  
7 official capacity as treasurer

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8  
9 **I. INTRODUCTION**

10 The Complainant in this matter alleges that the National Committee to Preserve Social  
11 Security and Medicare PAC (“NCP-PAC”) coordinated its actions with Senior Votes Count  
12 (“SVC”), a non-connected committee, to support Representative Carol Shea-Porter, a candidate  
13 for reelection in the First Congressional District of New Hampshire in 2014. NCP-PAC denies  
14 that it coordinated with SVC. For the reasons below, the Commission finds that there is no  
15 reason to believe that NCP-PAC violated the Federal Election Campaign Act of 1971, as  
16 amended (the “Act”).

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 The Act defines “contribution” to include “any gift, subscription, loan, advance, or  
19 deposit of money or anything of value made by any person for the purpose of influencing any  
20 election for Federal office.”<sup>1</sup> “Anything of value” includes all in-kind contributions and, unless  
21 otherwise exempted, the provision of any goods or services without charge or at a charge that is  
22 less than the usual and normal charge for such goods or services.<sup>2</sup>

23 Complainant alleges that NCP-PAC coordinated with SVC by announcing its support for  
24 Shea-Porter on the same day that SVC made independent expenditures on behalf of Shea-Porter,

<sup>1</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>2</sup> 11 C.F.R. § 100.52(d)(1).

1 and that NCP-PAC made a contribution to Shea-Porter's campaign because two of SVC's  
2 founders previously worked at NCP-PAC.<sup>3</sup> NCP-PAC asserts that its only contribution to Shea-  
3 Porter during the 2014 election cycle was on September 26, 2013, more than a year before the  
4 alleged coordination, and six months before SVC's establishment.<sup>4</sup> NCP-PAC also asserts that  
5 SVC's founders worked at NCP-PAC in 2012 and 2013, which was also well before SVC's  
6 establishment and the alleged coordination.<sup>5</sup> The alleged relationships, without more, do not  
7 indicate any in-kind contribution by NCP-PAC to SVC or to Shea-Porter. Therefore, in this  
8 matter, the Commission finds that there is no reason to believe that the National Committee to  
9 Preserve Social Security and Medicare PAC violated the Act.

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<sup>3</sup> Compl. at 25.

<sup>4</sup> NCP-PAC Resp. at 1. *See also* NCP-PAC's 2013 October Monthly Report at 17 (Oct. 7, 2013).

<sup>5</sup> NCP-PAC Resp. at 2.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4  
5 RESPONDENT: NGP VAN, Inc.

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6  
7 **I. INTRODUCTION**

8 The Complainant in this matter filed a supplement to the Complaint, which alleges that  
9 NGP VAN, Inc. ("NGP VAN") credited services to Senior Votes Count ("SVC"), a non-  
10 connected committee, and Carol Shea-Porter for Congress ("Committee"), the principal  
11 campaign committee of Representative Carol Shea-Porter, a candidate for reelection in the First  
12 Congressional District of New Hampshire in 2014, resulting in in-kind contributions. NGP VAN  
13 denies that it made in-kind contributions to SVC and the Committee. For the reasons below, the  
14 Commission finds that there is no reason to believe that NGP VAN violated 52 U.S.C.  
15 § 30118(a) by making prohibited contributions.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 The Federal Election Campaign Act of 1971, as amended (the "Act"), defines  
18 "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything  
19 of value made by any person for the purpose of influencing any election for Federal office."<sup>1</sup>  
20 "Anything of value" includes all in-kind contributions and, unless otherwise exempted, the  
21 provision of any goods or services without charge or at a charge that is less than the usual and  
22 normal charge for such goods or services.<sup>2</sup>

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<sup>1</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>2</sup> 11 C.F.R. § 100.52(d)(1).

1           The Act and Commission regulations prohibit corporations from making contributions to  
2 a federal political committee (other than independent-expenditure-only political committees),<sup>3</sup>  
3 and a political committee is prohibited from knowingly accepting or receiving such  
4 contributions.<sup>4</sup>

5           Complainant alleges that NGP VAN, a software vendor that provided services to the  
6 Committee and SVC, did not collect payments from them.<sup>5</sup> NGP VAN asserts that it did not  
7 forgive debts to SVC.<sup>6</sup> NGP VAN provided documents showing it adjusted SVC's account \$550  
8 to correct billing errors.<sup>7</sup> Regarding the allegation that NGP VAN also provided "'credits' to  
9 outstanding debt on the [Committee's] filings," the Supplemental Complaint provides no  
10 information or description of such credits. During the 2014 election cycle, the Committee  
11 reported payments to NGP VAN for software services, but there is no information regarding  
12 credits NGP VAN extended to the Committee. NGP VAN asserts there is no record of any debt  
13 the Committee owes,<sup>8</sup> the Committee has disclosed none, and we have no information to the  
14 contrary. Thus, NGP VAN does not appear to have made any prohibited in-kind contributions to  
15 the Committee. Therefore, the Commission finds that there is no reason to believe that NGP  
16 VAN, Inc. violated 52 U.S.C. § 30118(a).

<sup>3</sup> See, e.g., Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

<sup>4</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>5</sup> Suppl. Compl. at 1. The Supplemental Complaint states that the issue of NGP VAN "was not thoroughly addressed" in the Complaint, and alleges that NGP VAN made in-kind contributions to SVC and the Committee by forgiving certain debts. *Id.*

<sup>6</sup> NGP VAN Resp. to Suppl. Compl. at 1.

<sup>7</sup> *Id.* and attached Credit Memo.

<sup>8</sup> NGP VAN Resp. to Suppl. Compl at 1.